IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 4.1.2005

CORAM

THE HONOURABLE MR. JUSTICE A.K. RAJAN

WRIT PETITION Nos.4399/2001, 11019/2002,
448/2003 and 37048/2004

Mahajana Educational Board,
rep. by its Secretary,
T.A.Shanmugasundaram .. Petitioner in
WP.No.4399/2001

Chikkaiah Naicker
Education Board,
rep. by its Secretary,
Mr.R.Aswath .. Petitioner in
WP.No.11019/2002,
WP.No.448/2003, &
WP.No.37048/2004

Vs.

1. The State of Tamilnadu
rep. by its Secretary
to Government,
Education Department,
Fort St.George,
Chennai.

2.The Inspector General of
Registration,Chennai-28.

3.The Director of Collegiate
Education,Chennai-6. ..Respondents in
WP.No.4399/2001

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1. The State of Tamilnadu
rep. by its Secretary
to Government,
Higher Education Department,
Fort St.George, Chennai.

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2.The Director of Collegiate
Education, College Road,
Chennai.

3.The Regional Joint Director of
Collegiate Education, Coimbatore.

4.The Inspector General of
Registration,
120, Santhome High Road,
Chennai-28.

5.The District Registrar,
Karungal Palayam, Erode. .. Respondents 1 to 5
in WP.Nos.11019/2002,
448/2003 & 37048/2004

6.Association of University
Teachers (Regd.)
Tamil Nadu, rep. by its unit
at Chikkaiah Naicker College,
Erode, rep. by its Secretary,
Dr.V.Ambalavanan,
Chikkaiah Naicker College, Erode.
(6th respondent is
impleaded as per order of ..6th respondent in
Court dt.22.8.2003 in WP.No.448/2003
WPMP.No.17959/2003)

For Petitioner
in WP.Nos.11019/2002, : Mr.K.M.Vijayan, S.C.
448/2003 & 37048/2004 : for LA LAW

For petitioner in
WP.No.4399/2001 : Mr.S.Doraisamy

For respondents : Mr.R.Karthikeyan
A.G.P (Education)for RR.1 to 3

Mr.P.Jyothimani
for R6 in WP.No.488/2003

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C O M M O N O R D E R

All these writ petitions relate to Chikkaiah Naicker College at Erode, and since the issue involved is the same all these writ petitions are heard together and a common order is passed.

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2. (i) The prayer in WP No.4399 of 2001 is to issue a Writ of Certiorarified Mandamus calling for the records relating to the letter of the second respondent dt.7.12.2000 made in No.18627/I1/2000, quash the same and direct respondents 1 and 3 to hand over the Management of the Chikkaiah Naicker College, Erode to the petitioner.

(ii) The prayer in W.P.No.11019 of 2002 is to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 2nd respondent in his proceedings Na.Ka.No.47627/F2/97, dated 14.3.2002 and quash the same and consequently directing the respondents to approve and grant the recognition in accordance with the provisions of Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Societies Registration Act, 1975.

(iii) W.P.Nos.448 of 2003 and 37048 of 2004 have been filed by the same petitioner, who has filed W.P.No.11019 of 2002. These petitions are to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent in G.O.Ms.No.336 Higher Education (D2 Department) dt.18.12.2002 and G.O.Ms.No.543 Higher Education (D2 Department) dt.30.11.2004 appointing a Special Officer and quash the same and consequently directing the respondents to approve and grant the recognition to the petitioner Management to administer Chikkaiah Naicker College, Erode.

3. W.P.No.4399 of 2001 has been filed by one Shanmuga Sundaram representing Mahajana Educational Board. It is stated that (i) the petitioner Board was registered under the Tamil Nadu Societies Registration Act. The main object of the Board is to provide higher education for the people in and around Erode. The purpose of the writ petition is to request respondents 1 to 3 to rectify the maladministration of Chikkaiah Naicker College Managing Board and for that purpose to take over the administration by the petitioner Board.

(ii) The leading members of the Erode Town found the "Mahajana School Board" in the year 1898; it was running a High School; the Board started "Mahajana College" on 12.7.1954 to provide higher education at Erode. Mahajana School Board collected a huge amount from the public (for starting the College including) M.Chikkaiah Naicker and Periyar E.V.R.; the Government donated 52 acres of land.

(iii) Thereafter, on 17.3.1972, the "Mahajana School Board" passed a resolution to form a separate society for running the College. Accordingly, on 19.4.1972, the "Chikkaiah Naicker College Managing Board" was formed and registered as No.76/1972. All the assets of the Mahajana School Board were transferred to

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the newly formed College Board. Thus, the 'Mahajana School Board' has become 'Mahajana College Board'.

(iv) Periyar E.V.R. was the Founder President of the College Board; thereafter, E.V.R.Maniyammai became the President; after her death, one Rajendiran was elected as the President, and his brother Rajasekar declared himself as Secretary and Correspondent. From the year 1981, the College Board did not function as per the Act. On 8.12.1987, the Secretary of the College Board sent a communication to the District Registrar containing the list of Office Bearers of the Board. Thereafter, no communication was sent.

(v) On 28.12.1994, the Government issued a notification under the caption 'Dissolution of certain societies under the Tamil Nadu Societies Registration Act, 1975' in which it was published that the College Board registered as No.76/72 will be subjected to the procedure contemplated under Sec.44 of the Tamil Nadu Societies Registration Act, after the expiry of three months from the date of publication of the above notification. Since no representation was made by any person, the Government in the Gazette Notification dt.3.5.1995 issued an order dissolving the College Board as provided under Sec.44(iv) of the Act. Thus, the College Board started on 19.4.1972 and registered No.76/72 became defunct from 28.12.1994.

(vi) No appeal was filed against the dissolution of the Society by any one. Therefore, there was no legal status for the Chikkaiah Naicker College Managing Board from that date. Though the society was dissolved, the respondents did not take any action to take over the Management of the College, but allowed the former Secretary Rajasekaran to continue the administration of the College.

(vii) The third respondent issued a notice on 9.1.1998 directing the Joint Director of Collegiate Education, Coimbatore, to make the payment directly to the staff of the College on the ground that the Educational Board was not functioning properly. There was no Educational Board after 3.5.1995.

(viii) As per Sec.27 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, no property of a private college can be transferred except with previous permission in writing of the competent authority, by way of sale, gift or any other manner; any such transfer without such permission is not valid. But, contrary to the restriction, the said Rajasekaran alienated the properties of the College and misappropriated the amount.

(ix) The first respondent on 1.6.1998 issued a show cause notice to the Secretary of the College Board calling for an explanation

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as to why action should not be initiated as provided under Sec.14-A of the Tamil Nadu Private Colleges (Regulation) Act. Such notice itself is bad in law as there was no College Board and there was no society; the notice was issued to a non-existent person. But, still, no action was taken. In the meanwhile, on 4.3.1998 Rajasekaran died.

(x) After his death, his own son R.Aswath assumed the Office of Secretary and Correspondent of the defunct the Chikkaiah Naicker College Board. After the said show cause notice, the said Aswath convened a meeting of his friends and family members on 24.6.1998 and founded a new Society by name 'Chikkaiah Naicker Education Board' and registered it before the District Registrar of Erode as No.91/98 on 6.7.1998. While registering the above Society, it was claimed that a Resolution was passed by 13 members; out of those 13 members, one Dr.D.Padmanabhan in his letter dt.22.12.1998, addressed to the Joint Director of Collegiate Education, stated that he did not attend the meeting (said to have been convened by R.Aswath), and he had not signed in any resolution.

(xi) After the formation of the new Society, Aswath has taken control of Chikkaiah Naicker College without any authority of law, and without the permission of R1 to R3 taken over the huge properties and administration of the Society illegally. But, R1 to R3 are not taking any action.

(xii) Against the Orders passed by the third respondent, on 12.10.1998, Aswath filed two suits before the Sub-court at Erode. O.S.No.532/98 was for a decree of declaration that the proceedings initiated by R3 in Na.Ka.No.6764/E1/98-1, dt.1.6.1998 as illegal and ultra vires; and O.S.No.533/98 was to declare the letter of the Regional Joint Director of Collegiate Education, Coimbatore as illegal and for mandatory injunction directing the Society of R.Aswath to function as the educational agency. The suit itself was not maintainable in view of the bar under Section 49 of the Tamil Nadu Private Colleges (Regulation) Act, 1976. Along with the suit, an application in I.A.No.633/98 was filed for an order of injunction not to give effect to the above said proceedings. The Sub-Ordinate Court has passed an Order as prayed for. After obtaining the said injunction, Aswath is making arrangements to transfer the management of the College Board to a third party along with the properties.

(xiii) Once the Society is dissolved, it is the bounden duty of the authorities to pass orders for winding up the Society and amalgamating the properties with a similar society. A notice was issued to R1 and R2 for that purpose; but, no action was taken by them. Hence, the writ petition in W.P.No.12478/2000 for a direction to hand over the management of the College Board as

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provided under the Act, and this Court passed an Order on 26.7.2000 directing R1 to dispose of the representation dt.10.1.2000 on merits.

(xiv) The Inspector General of Registration clarified by letter dt.2.6.2000 that the Resolution of Chikkaiah Naicker College Managing Board is not a valid one in view of the fact that except two members all the other seven members were not the members of the dissolved society. The Society ceased to exist after 3.5.1998, and therefore no resolution can be passed in the name of the said Society. As per the direction of this Court in W.P.No.12478/2000, enquiry was conducted and the petitioner also filed a number of documents. The Inspector General of Registration on 7.12.2000 wrote a letter stating that the question of Amalgamation of the Society of 76/72 with the petitioner's society [91/98] will be considered only if the Society of 76/72 passes such a resolution. Such a resolution cannot be passed since it became defunct with effect from 28.12.1994. The Inspector General of Registration also rejected the resolution passed by the Society formed by Aswath. Hence, the writ petition.

7. In the affidavit filed by R.Aswath in WP No.11019 of 2002 it is stated as follows:

Chikkaiah Naicker College was started in the year 1954 by Periyar E.V.R., who was the first President of the College. Thereafter, Rajasekar, son of Chikkaiah Naicker, became the Secretary. The petitioner is the son of the said Rajasekar. After the death of Rajasekar, the College Board became defunct since 3.5.1995. The petitioner became the Secretary on 29.7.1998. Since the other members have either become inactive (since resigned or dead), it has to function with the strength of only three of its members, and hence they formed a new society called 'the Chikkaiah Naicker Education Board' registered under Societies Registration Act. With the intention of making effective management, they passed a resolution on 29.7.1998 to dissolve the society and then to transfer all the assets of 'the Chikkaiah Naicker College Managing Board' to 'the Chikkaiah Naicker Education Board'. The former society also has consented for the approval of the change of the Educational Agency. Therefore, the application for transfer was submitted. That was not considered as there were certain charges of irregularities against the earlier Society. Therefore, the writ petition in W.P.No.5272 of 2001 was filed to quash G.O.Ms.No.489, dt.19.12.2000 and for a direction to approve the Form IV for the change of educational agency and to recognise the petitioner's society. This Court, without expressing any opinion, directed the third respondent to consider the application for approval for change of educational agency. Pursuant to the above Order, the

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petitioner made a representation to R2 and R3. R2 by the impugned Order rejected the request made by the petitioner. Hence, the writ petition to quash that Order.

8. In the counter affidavit filed in WP No.11019 of 2002 by the Director of Collegiate Education it is stated as follows:

(i) Before starting of the Chikkaiah Naicker College Managing Board, Erode a School was run by the Mahajana Board. Subsequently, from the donations of the people of various castes and creed, Chikkaiah Naicker College was started; it is not an ancestral property of the petitioner. The Government lands were given to the Mahajana Board for use as the site for college buildings, play grounds, etc. at free of cost, on 31.12.1957 by the District Collector. The Mahajana School properties were given by the people of all the communities as donations and the land was given by the Government of Tamil Nadu. The Erode Mahajana School passed a Resolution dt.19.4.1972 to register a separate society by name Chikkaiah Naicker College Managing Board, which started the College; it is a private college governed by the Tamil Nadu Private Colleges (Regulations) Act, it gets 100% government aid of salary in respect of teaching and non-teaching staff and 80% in respect of non salary items. The managing Board of Chikkaiah Naicker College, was not functioning as per the Act. The former Secretary G.Rajasekar was making a one man show and hence there are number of irregularities like not fixing the scale of pay for the Principal; a petrol bunk was permitted to be established in the college without permission from the competent authority; non-payment of pension and pensionary benefits to one English Lecturer even after his death; the Orders of the Courts were not implemented in respect of payment of salaries and allowances to one Lecturer who was retired from service; reinstatement of the suspended employee was done; failure to submit the list of movable and immovable properties of the college and so on. Since the functioning of the educational agency was not satisfactory and there was no proper educational agency, the second respondent issued orders for direct payment of salary to the staff of the College by Proceedings dt.9.1.1998.

(ii) The Registration Department notified in the Official Gazette on 3.5.1995 that the Chikkaiah Naicker College Managing Board was a defunct society.

(iii) The Government after satisfying that there was no proper approved educational agency in the College and in the interest of the Collegiate Education, appointed the the Regional Joint Director of Collegiate Education as Special Officer to administer the affairs of the College by G.O.Ms.No.489,

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dt.19.12.2000. The petitioner filed a writ petition in W.P.No.5272/2001 challenging the said Government Order. As per the judgment in W.P.No.5272/2001, the second respondent passed orders after scrutinizing the application of the petitioner with reference to the Tamil Nadu Private Colleges (Regulations) Act, 1976, rejecting the request of the petitioner (by its Proceedings dt.14.3.2002).

(iv) The former Secretary was the son of the brother-in-law Thiru M.Chikkaiah Naicker - not the son of Chikkaiah Naicker. Chikkaiah Naicker College, Erode, was started in 1954. On publication of a Government notification on 3.5.1995 to the effect that the Chikkaiah Naicker College Managing Board was deemed to be dissolved and was struck off from the register of Societies, there was no educational agency in the College. Out of the nine original members, only two are the members of the present society. The petitioner was not a member of the former Managing Board. The special resolution, alleged to have been passed on 29.7.1998 to dissolve the defunct society and then to transfer all the assets of 'the Chikkaiah Naicker College Managing Board' to 'the Chikkaiah Naicker Education Board' headed by the petitioner, has been declared as unacceptable by the Inspector General of Registration in his letter dt.2.6.2000. The reason for that is out of the nine members who passed the resolution dt.29.7.1998 only two alone were its members and the other seven members were not its members. In view of the notification dt.3.5.1995, the present resolution dt.29.7.98 is of no consequence.

(v) As per Section 7(1)(b) of the Tamil Nadu Private Colleges (Regulations) Act, 1976, the educational agency when it transfers its rights to another educational agency, both should jointly sign in form-IV and apply to the competent authority for approval. But, in this case, the petitioner signed on behalf of both the societies. That is contrary to the provisions of Sec.7 (1)(b) of the Act. The Inspector General of Registration has stated, in his letter dt.2.6.2000, that the Resolution passed by the dissolved Chikkaiah Naicker College Managing Board on 29.7.1998 for transferring its assets to the petitioner's society, was not acceptable. The Chikkaiah Naicker College Managing Board was a registered Society under the Societies Registration Act, governed by the rules and the regulations under that Act. The petitioner has no legal right on the properties of the College and it is not entitled to administer the College. The Special Officer was running the College for one year as per the G.O., dt.19.12.2000, and that was subsequently extended. That Order is legally sustainable.

9. The Association of University Teachers, the sixth respondent, in its counter has stated as follows:-

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(i) The College was started in the year 1954, but it was maintained by the Chikkaiah Naicker College Managing Board from 1972, which was registered under the Tamil Nadu Societies Registration Act. Before it was declared as 'defunct', one Mr.G.Rajasekaran was the Secretary of the Managing Board. After publication in the official gazette on 3.5.1995 that the Managing Board has become defunct, no steps were taken to revive the society as per the provisions of the Act. Under those circumstances, the properties of the dissolved Society can be transferred only as per the directions of this Court. The resolution passed by two out of nine members is not valid in law, and such resolution cannot be a ground to transfer the assets of the erstwhile the Chikkaiah Naicker College Managing Board. R.Aswath, son of the former Secretary, has started a new society called the Chikkaiah Naicker Education Board and that was registered in the year 1998. He attempts to show as if the Society floated by him is the successor of the previous defunct society. He has no legal right except that he is the son of the former Secretary.

(ii) The appointment of a Special Officer was challenged by Aswath in W.P.No.5272 of 2001, and in that writ petition the High Court ordered to implead this petitioner and finally directed the Regional Joint Director to consider the application alleged to have been filed by the petitioner in form IV and pass Orders in accordance with law. The second respondent after considering the application rejected the claim of Aswath. That Order is legally valid and cannot be interfered with. In the meanwhile, the Government periodically extends the term of the Special Officer. The Government also issued a show cause notice to the petitioner and passed the impugned Order on 18.12.2002 taking over the Management of the College, which is perfectly valid in law. Hence, the writ petitions are to be dismissed.

II 10. Mr. K.M.Vijayan, learned Senior Counsel for the petitioner in W.P.No.11019 of 2002, submitted that admittedly the college was administered by 'The Chikkaiah Naicker College Managing Board'; since seven (out of nine) members of the society died or became unable to perform the duties as members of the society, new members were included and a resolution was passed transferring the entire administration of the College including the properties in favour of "The Chikkaiah Naicker Education Board", which is a registered society under the Act. 'The Chikkaiah Naicker Education Board' has also passed a similar resolution; they submitted Form IV as per Section 7 r/w Rule 5 of the Tamil Nadu Private Colleges (Regulation) Act. That resolution is binding on the Government and hence 'The Chikkaiah Naicker Education Board' is bound to be recognised by the Government. Therefore, G.O.Ms.No.489, dt.19.12.2000 appointing

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the Special Officer to manage the College and its properties is not legally sustainable.

(i) The learned counsel for the petitioner has drawn the attention of this Court to Secs.44(8), 39, 41 and 55 of the Tamil Nadu Societies Registration Act, which are as follows:

> "Section 48(8) "If the name of the registered society having been struck off the register, has not been restored or if the period allowed for appeal has lapsed or no appeal has been made or an appeal has been made but dismissed, under this Act, the registered society shall not function and the provisions of section 39 shall apply as if the registration of such society has been cancelled.
>
> Section 39 "Effect of cancellation of registration: When the registration of a registered society is cancelled, the registered society shall forthwith cease to carry on its business, except so far as may be required for the beneficial winding up thereof, for which purpose it shall pass a special resolution and dissolve itself in the manner provided in Section 41.
>
> Section 41 "Dissolution of registered societies and adjustment of their affairs:- (1) A registered society may, by special resolution, determine that it shall be dissolved forthwith or at the time specified in the resolution and all necessary steps shall be taken for the disposal and settlement of the property of the registered society and its claims and liabilities according to the bye-laws, if any, of the registered society and if there are no bye-laws, according as the committee, or where a special committee is appointed under sub-section (2), the special committee, may find it expedient.
>
> (2) A registered society may, when passing the special resolution referred to in sub-section (1), appoint a special committee consisting of such number of members as may be specified in the resolution for winding up the affairs of the registered society.
>
> (3) If any dispute arises among the members of the registered society, the committee, or the special committee, if any, the adjustment of the affairs of the registered society, shall be referred to the court and the court shall make such order in the matter as it shall deem fit:

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Provided that any matter decided by a special resolution of the registered society by the committee or by the special committee, if any, shall not be deemed to be a matter in dispute within the meaning of this sub-section.

(4) If the Central or any State Government is a member of, or a contributory to, or otherwise interested in, any registered society, such society shall not dissolved under sub-section (1) without the consent of the Central or State Government concerned.

Section 55 " Acts of registered Societies, etc., not to be invalidated by certain defects:- No act or proceedings of a registered society or any committee or of any officer of the society shall be deemed to be invalid merely on the ground,__

(a) of any vacancy or defect in the organisation of the society or the formation of the general body or the constitution of the committee;

(b) of any defect or irregularity in the election or appointment of a member of the committee or an officer of the society; or

(c)of any defect or irregularity in such act or proceeding not affecting the merits of the case.

The learned counsel contended that as per Section-55, any vacancy in the membership or defect in the formation of the committee will not invalidate any resolution or decision of the Society. As per Section-41, a Society declared as defunct can pass special resolutions. That special resolution was not to dissolve the Society but to amalgamate it with another Society. Hence, the resolution passed is valid. Further, the petitioner in W.P. No.11019/2002 has at least two members of the earlier committee, whereas the petitioner in W.P. No.4399 of 2001 has got not even one member for that Society. New members were included in the committee and the resolution passed by such committee is valid. Since the other Society has also passed a similar resolution consenting to take over the college, the administration of the college and its properties shall be entrusted to the petitioner in W.P. No.11019 of 2002.

Therefore, Writ Petition No.11019 of 2002 is to be allowed as prayed for.

11. Mr. S.Doraisamy, learned counsel appearing for the petitioner in WP No.4399/01, submitted that this petitioner (Mahajana Society) was the original society, which later established the

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Chikkaiah Naicker College. Though the College was run by a different society, this petitioner/society is the mother society. Hence, it has got a right to continue the administration when the society, which was constituted for managing the College, namely, the 'Chikkaiah Naicker College Managing Board', became defunct. He also submitted that after the publication in the Official Gazette on 3.5.1995, the College Managing Board had become defunct. The members of the defunct society can no more claim themselves to continue to be the members of that society; they are in no way connected with the society. Therefore, the two persons, who were formerly members of the College Board, did not have the status of a "member" of that College Board after 1995. Hence the resolution passed (by the nine persons claiming themselves to be the members of the Chikkaiah Naicker College Managing Board) in the year 1998 does not have any legal effect; it would be, at the most, a resolution passed by nine individuals. Therefore, that resolution cannot be a basis for transferring the administration to another society (the Chikkaiah Naicker Education Board). On the other hand, the petitioner, representing the mother society, which started the College, has to be given the right of administration of society. For that reason, the impugned G.O. is liable to be set aside and after striking the G.O., the Management shall be given to the petitioner in W.P.No.4399/2001.

12. In the alternative, the learned counsel submitted that if the Court comes to the conclusion that the petitioner in WP No.4399/2001 is also not entitled to be entrusted with the management of the College, then the administration shall be taken over by the Government itself. But the administration cannot be given to the petitioner in WP No.11019/2002.

13. Mr. Jothimani, learned counsel appearing for the sixth respondent, submitted that after the Society has become defunct in the year 1995, there was no society at all. Hence, the resolution alleged to have been passed by the society was not legal and no consequence would flow from that resolution. Therefore, the impugned Order cannot be set aside as it is perfectly valid and enforceable.

14. Mr.R.Karthikeyan, A.G.P. (Education), appearing for R1 to R3, submitted that -

(i) the resolution passed by the petitioner and his associates was not a resolution of 'The Chikkaiah Naicker College Managing Board' that become defunct in the year 1995. When it was published in the official gazette that the society had become defunct, no steps were taken to revive the society. Therefore, the society had become defunct permanently and all the assets and liabilities of the society are transferred to the Government.

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Further, the newly registered society (registered in the year 1998, in which R.Aswath is also a member) cannot claim the properties of the defunct society. That apart, to transfer a property of one society to another society, a joint application under Form IV by both the societies are necessary. But, in this case, that has not been so filed. Therefore, the claim of Aswath (petitioner in W.P. No.11019/2002 is not legally sustainable.

(ii) The petitioner in W.P. No.4399 of 2001 has nothing to do with the administration of the college. Even assuming it was responsible for creating the College Managing Committee, the two Societies are separate; registered separately. Hence, the two are unconnected with each other. Therefore, after the College Committee became defunct, the petitioner-society cannot claim that it became entitled to administer the college. Hence, the learned Government Pleader contended that the impugned order cannot be set aside. Therefore, the Order of appointment of the Special Officer for a period of one year and extended periodically is legal and that cannot be interfered with.

III 15. From the above facts and contentions by the learned counsel for the petitioner and the respondents, the following facts are admitted by all:

The Mahajana Board was started in the year 1954 and a School was started by it. The Manajana Board was responsible for creating another separate society under the name 'The Chikkaiah Naicker College Managing Board' in the year 1972. Though the college was started earlier, the society was registered only in 1972. That College Managing Board was administering the College and that society was declared as defunct in the year 1995 by publication in the official Gazette.

16. The claim of the petitioner in WP No.11019 of 2002 is that being the son of the former Secretary of the College Managing Board, he became a member of that society and along with two other surviving members of that society and a few others a resolution was passed to merge the College Managing Board with a newly constituted 'the Chikkaiah Naicker Education Board'. According to him, out of the nine original members of Chikkaiah Naicker College Managing Board, only two are surviving and they along with seven other new members had passed the said resolution. Therefore, that resolution is legal and valid. The new society, 'Education Board', also has passed a similar resolution accepting the transfer of all the assets and the liabilities of the college Board. Therefore, the provisions as contemplated under Section 41 of the Societies Registration Act are satisfied and hence the Chikkaiah Naicker Education Board must be recognised as the society which is entitled to manage the college and hence the entire properties to be handed over to that

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society. Therefore, the appointment of the Special Officer is not legal, and hence, that order has to be set aside. That contention is challenged by the petitioner in WP No.4399/2001, and by all the other respondents (in all the writ petitions, namely, the Governmental Authorities and the College Teachers Association). Their main contention is that a defunct society, which was not revived as per the provisions of the Act, cannot pass any valid "Resolution".

17. As per the provisions of the Act, a Society can be declared as defunct by the Inspector General of Registration. When such declaration is made, the members of the Society can take steps with the period prescribed under the Act to revive the society. That is the only method by which a defunct society can be revived. There is no other method to revive a defunct society. In this case, admittedly, no such steps were taken to revive the society; not even an application was made under Section 48 to revive the society within the specified period provided under the Act. Therefore, the Order of the Inspector General of Registration declaring The Chikkaiah Naicker College Managing Board as defunct has become final. That resulted in the cancellation of Registration of the 'College Board' (the Society), as per Section-48. Thereafter, as per Section-39, the College Board ceased to carry on its functions. The only act permissible under Section 39 is to take steps for winding up and for that a "special resolution to dissolve the society' may be passed. After the cancellation of registration, the Society cannot carry on any business of the Society. Therefore, from 5.3.1995, the society by name Chikkaiah Naicker College Managing Board ceased to exist. Once the registration of the Society had been cancelled, the surviving members also loses that status (as the members of the society). They are thereafter only ordinary individuals. Ordinary individuals do not have any right to take some other persons as "members" of the Society (which ceased to exist). Therefore, the resolution dated 29.7.1998 passed by Aswath and his companions was not a "Resolution" of the Society. Further, Aswath was not a 'member' of the society 'College Managing Board' on any day, because, the son of a deceased member can not become a member of the society unless he was admitted by the society as member.

18. Admittedly, the Chikkaiah Naicker Education Board has been registered only in the year 1998. Therefore, this is a new society. That society has passed a resolution to take over the administration of Chikkaiah Naicker College Managing Board. Such a resolution is not binding anyone else. To change the educational agency, a joint resolution of both the agencies shall be passed as per Sec.7 of the the Tamil Nadu Private Colleges (Regulations) Act r/w Rule 5 of the Tamil Nadu Private Colleges (Regulations) Rules, and a joint application shall be made in Form IV.

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Section 7(1)(b) reads as follows:

> "Approval of transfer of permission. - (1) (b) Whenever the management of any private college is proposed to be transferred, the educational agency and the person to whom the management is proposed to be transferred may, before such transfer, apply jointly to the competent authority for approval of the transfer."

Rule 5 reads as follows:

> "Application for approval of transfer, etc., under section 7.- (1) Every application for approval of a change in the Constitution of the educational agency shall be in Form 3.
>
> (2) Every application for approval of transfer of management of any college or for the approval of any such transfer where the transfer was made without prior approval having been obtained for such transfer, shall be to Form 4."

Thus, it is seen that a joint resolution should be passed by both the societies and they must file a joint application in Form IV under the Tamil Nadu Private Colleges (Regulations) Act for amalgamation. In this case, there is neither a joint resolution nor a joint application. There are two separate applications - One by Mr. Aswath representing 'the College Committee' (the society), whose registration was cancelled and another by the same Aswath representing the Education board (a new society). As stated above, the College Board ceased to exist from 1995. Hence, there was only one Society. Therefore, these applications under Form IV were not in the manner prescribed under the Act. Hence, it is not in accordance with the provisions of the Act and the Rules. Therefore, the Inspector General of Registration has rightly rejected that request as the Inspector General of Registration cannot accept the request made by Aswath to amalgamate the newly formed 'Education Board' and the College Committee (a non-existing society).'

19. It is true that as per Section 55, no act of the society shall be invalid merely on the ground of vacancy in the membership of the society, or due to any defect in the formation of a general body, or any irregularity in the proceedings. But, this provision will apply only to an existing society; it is not available to a society whose registration has been cancelled. When the registration is cancelled, Section-55 will not come into play; only Section-39 will be applicable. Under Sec.39 of the Tamil Nadu Societies Registration Act, 1975 the only resolution that may be passed by a defunct society is a Special Resolution for winding up or to dissolve. A Society which is declared as defunct shall take steps in accordance with the Act & Rules to set aside the order of striking off the name of the society in

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the Register maintained by the Registrar and restore the name in the register. Since the order of striking off the name was not restored for about 3 years, it can not be restored. That has resulted in cancellation of the Registration of the Society, only Section-39 and 48(8) of the Act will come into play in the given circumstances.

20. Inasmuch the Registration of Chikkaiah Naicker College Managing Board, which was managing the affairs of the college was cancelled (by operation of law) in the year 1995, from that date onwards, the entire management and the properties deemed to have been vested with the Government. Therefore, the entire properties of the College and the right to manage the College has become vested with the Government on 3.5.1995. Therefore, from that date onwards it has become a Government College. The Government College is run by a Special Officer by the impugned G.Os. Such an Order cannot be said to be illegal. Therefore, those orders cannot be quashed.

21. For the foregoing reasons, Chikkaiah Naicker College, Erode, had become a Government College and the properties of it are vested with the Government from 3.5.1995. Therefore any rights or obligations alleged to have been created by any other person other than the Government, is not legal; they are non-est in law. It is for the government to pass orders regarding the administration of the college. Therefore, the lease granted for petrol bunk is not valid. That is, all acts, purported to have been done by the College Managing Committee, by Aswat and others, are not valid and hence, had not created any legal right or obligation.

22. In the result, all the writ petitions are devoid of merit and hence, the are dismissed. Mr. Aswath as well as petitioner in 4399 of 2001 have filed these writ petitions without any legal basis, all the writ petitions are dismissed. No costs. Consequently, WMP No.11276 of 2001, WPMP No.29260 of 2003 and WPMPs 44476 & 44477 of 2004 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai.

2.The Director of Collegiate
Education, College Road,
Chennai.

3.The Regional Joint Director of
Collegiate Education,
Coimbatore.

4.The Inspector General of
Registration,
120, Santhome High Road,
Chennai-28.

5.The District Registrar,
Karungal Palayam, Erode.

+ 3 ccs to M/s La Law Advocate Sr.607.

One cc to Mr.S.Doraisamy Advocate SR.600.

One cc to Govt. Pleader SR.625.

One cc to Mr.P.Jyothimani, Advocate SR.670.

WP.Nos.4399/01, etc.,

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